IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 354 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL WINES
Versus
NATPUR CO-OPERATIVE BANK LTD. AND OTHERS

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Appearance :
MR SHITAL PATEL for the applicant
MR HM PARIKH for the respondents

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 13/03/2006

ORAL JUDGMENT

By filing this revision application under Section 115 of the Code of Civil Procedure, the petitioner who is a third party in Special Darkhast No.119 of 1989 has prayed for quashing and setting aside the order

passed by the learned Civil Judge (Senior Division), Nadiad dated 7.2.1998passed below Exhibit 30. Respondent No.1 cooperative bank is the decree holder and a money decree was passed against respondent Nos.2 to 6 herein. The decree-holder thereafter tried to execute the said decree by attaching the immovable properties of the judgment debtor. During the pendency of Execution Application No.119 of 1989 the present petitioner gave an application at Exhibit 30 as a third party. The aforesaid third party submitted that he is a sitting tenant of the premises in question and, therefore, the property in question may not be sold by way of public auction. The Executing Court by the impugned order rejected the said objections of the third party. The Executing Court found that the petitioner – third party was inducted subsequently in the rented premises to defeat the right of the decree-holder. Against the aforesaid order rejecting the application of the petitioner at Exhibit 30, the petitioner has filed this revision application under Section 115 of the Civil Procedure Code.

Learned advocate, Mr Shital Patel for the petitioner submitted that before even the decree was passed, the petitioner was occupying the rented premises and, therefore, the property should not be allowed to put to sale by way of public auction. Learned advocate Mr H.M. Parikh who is appearing for the decree holder – bank submitted that the application of the petitioner before the Executing Court was premature as the petitioner cannot insist that the property of the judgment debtor should not be put to public auction. He has submitted that in view of the provision of Order 21 Rules 95 and 96 of the Civil Procedure Code such application was not maintainable before the property was actually put to sale.

I have heard both the learned advocates for the parties. In my view, the application of the petitioner was clearly premature. In this connection, reference is required to be made to Order XXI Rule 95 and 96 of the Civil Procedure Code, which reads as under:-

> "Order XXI Rule 95 & 96
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> 95. Delivery of property in occupancy of judgment-debtor. Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.
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> 96. Delivery of property in occupancy of tenant. -- Where the property sold in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchase."

The petitioner who is a third party had no right to prevent the decree holder to move the Court for issuance of sale proclamation. If there is any right in favour of the petitioner, it is limited only qua protecting his tenancy rights and not beyond that. The Executing Court should not have decided that application at all as the said application was required to be decided only at the instance of the auction purchaser. After the property is put to auction and if someone purchases the same, then, at that time, the purchaser can move such an application for putting him into possession and at that time the Court can decide whether the petitioner has got any right to continue as tenant or whether tenancy is created with a view to defeat the right of the decree holder. In that view of the matter, the order passed by the Executing Court is set aside only on the aforesaid limited ground. The Executing Court shall now proceed further in accordance with law for the purpose of executing the decree and if any sale proclamation is issued and if the property is purchased, the procedure as required by Rule 95 and 96 of Order XXI of the Civil Procedure Code is to be followed. At that time, if any resistance is put forward by the present petitioner, the Executing Court shall decide the same in accordance with law and without being influenced by the observations made in the impugned order. If the property is already subjected to any charge of the public body, the Executing Court shall also consider the same. The Executing Court shall now proceed with the execution proceedings expeditiously and if it is of the opinion that any sale proclamation is required to be issued after following the principles of law and provisions of Civil Procedure Code, the same may be done expeditiously and the execution proceedings be disposed of within a period of six months from the date of receipt of writ of this Court.

In view of the aforesaid observations and directions, the petition is partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

(P.B.Majmudar, J.)

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